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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 Commodity Futures Trading Commission,

17 *Plaintiff,*

18 v.

19 OOKI DAO (formerly d/b/a bZx DAO), an
unincorporated association,

20 *Defendant.*
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Case No. 3:22-cv-5416-WHO

**MOTION FOR LEAVE TO FILE *AMICUS*
CURIAE BRIEF OF ANDREESSEN
HOROWITZ AND FOR LEAVE TO
PARTICIPATE IN UPCOMING HEARING**

Judge: Hon. William H. Orrick

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Andreessen Horowitz (known as “a16z”), through its
 3 undersigned counsel, moves this Court for leave to file a brief as *amicus curiae* in this litigation
 4 and to participate in the upcoming hearing scheduled for November 30, 2022. This motion is
 5 supported by the accompanying proposed order granting the motion, a declaration, and the *amicus*
 6 brief, attached as Exhibit A. As stated in the declaration filed with this motion, Plaintiff
 7 Commodity Futures Trading Commission consents to the filing of a16z’s *amicus* brief, conditioned
 8 on Plaintiff receiving additional time to submit its opposition. a16z does not oppose the
 9 Commission receiving additional time to submit its opposition.

10 **INTEREST OF AMICUS CURIAE**

11 a16z is a Silicon Valley-based venture capital firm founded in 2009, with one of the largest
 12 dedicated funds for investing in crypto and web3 startups. As set forth more fully in the
 13 accompanying brief, a16z is an active investor and thought leader in the web3 space, supporting
 14 responsible development of the industry through its research organization, engineering, and
 15 security teams, legal and regulatory teams, go-to-market expertise, recruiting services, and
 16 educational content. Decentralized Autonomous Organizations (“DAOs”) are a critical component
 17 of the evolving web3 ecosystem, on which a16z team members have written leading commentary.¹

18 The other *amici* in this case have set forth important arguments addressing the
 19 Commission’s motion for alternative service. a16z submits this *amicus* brief to address significant
 20 additional issues not yet raised by the other *amici* or addressed by the Commission. As the attached
 21 *amicus* brief explains, a16z respectfully submits that the Court should reconsider its order granting
 22 the Commission’s motion for alternative service because the Complaint fails to allege a lawful
 23 purpose of the Ooki DAO or identify any members who can receive process on behalf of the
 24 alleged association, which are prerequisites for service of process on an unincorporated association
 25 under California law.

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 28 ¹ See, e.g., Miles Jennings & David Kerr, *A Legal Framework for Decentralized Autonomous Organizations* (Oct. 26, 2021), <https://a16zcrypto.com/wp-content/uploads/2022/06/dao-legal-framework-part-1.pdf>; see also Dkt. 22, DEF Br. 4 n.2 (citing same).

1 a16z brings a unique contribution and focus to this case. Its team includes engineers,
 2 investors, and former regulators with deep expertise in the rapid development of decentralized
 3 governance models, who have spent a considerable amount of time researching and analyzing the
 4 distinctive characteristics, uses, and benefits of the DAO structure. a16z believes that its
 5 perspective on the instant issues regarding service, as well as broader issues that may arise over
 6 the course of this litigation, will aid in ensuring that the Court is fully apprised of the complexities
 7 and implications of this case.

8 ARGUMENT

9 “[W]hether to allow Amici to file a brief is solely within the [c]ourt’s discretion, and
 10 generally courts have ‘exercised great liberality’ in permitting amicus briefs.” *California v. United*
 11 *States Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019) (quoting *Woodfin Suite*
 12 *Hotels, LLC v. City of Emeryville*, No. 06-cv-1254, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007))
 13 (alteration in original). To appear as an amicus, all an individual must do is demonstrate “that his
 14 participation is useful or otherwise desirable to the court.” *See id.* Notably, “[d]istrict courts
 15 frequently welcome *amicus* briefs from non-parties concerning legal issues that have potential
 16 ramifications beyond the parties directly involved.” *Levin Richmond Terminal Corp. v. City of*
 17 *Richmond*, 482 F. Supp. 3d 944, 951, n.1 (N.D. Cal. 2020) (quoting *NGV Gaming, Ltd. v. Upstream*
 18 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)).

19 a16z’s proposed *amicus* brief satisfies these criteria. As discussed in the brief, the Court’s
 20 decision on the Commission’s motion for alternative service will have far-reaching implications
 21 not just for token-holding voting members of the Ooki DAO, but potentially for members of all
 22 DAOs. Moreover, as the other *amici* have pointed out, Dkt. 16, LeXpunK Br. 7; Dkt. 22, DEF Br.
 23 2, no one has stepped forward on behalf of the Ooki DAO to respond to the Commission’s motion
 24 for alternative service, which makes the participation of *amici* important for ensuring that the Court
 25 is presented with all considerations pertinent to the motion. By virtue of a16z’s experience with
 26 the burgeoning DAO ecosystem, it possesses a unique perspective that it believes and hopes will
 27 assist the Court in resolving the Commission’s motion and reconsideration thereof.

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The arguments set forth in a16z's proposed *amicus* brief – namely, that the request for alternative service is inconsistent with specific requirements of California law for serving an unincorporated association – have not been addressed by the Commission or raised by other *amici*. a16z's brief addresses the applicable legal framework for serving an unincorporated association and explains how the present motion for alternative service would circumvent those requirements, threaten the underpinnings of lawful decentralized governance structures, and risk setting this case on a path to improper relief and an unenforceable judgment.

CONCLUSION

For the foregoing reasons, a16z respectfully requests that the Court grant leave to file the *amicus curiae* brief attached as Exhibit A and to participate in the hearing scheduled for November 30, 2022.

Dated: October 31, 2022

Respectfully submitted,

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